

Nicholas J. Henderson, OSB No. 074027  
nhenderson@portlaw.com  
Motschenbacher & Blattner, LLP  
117 SW Taylor St., Suite 300  
Portland, OR 97204  
Telephone: (503) 417-0508

Attorneys for Plaintiffs David Schaezler

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re  DAVID PAUL WILLIAMS,  Debtor.	Chapter 7  Bankr. Case No. 22-60031-tmr7
DAVID SCHAEZLER, an individual,  Plaintiff,  v.  DAVID PAUL WILLIAMS, an individual,  Defendant.	Adversary No.  COMPLAINT FOR DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. § 727, AND OBJECTING TO DISCHARGEABILITY UNDER 11 U.S.C. 523

David Schaezler (“*Schaezler*” or “*Plaintiff*”) submits this complaint against David Williams (“*Williams*”), and alleges as follows:

**LBR 7008-1 STATEMENT**

1. Plaintiff consents to the judge’s entry of final orders or judgment in this adversary proceeding.

**BACKGROUND**

2. On March 10, 2020, articles of incorporation were filed with the Delaware Secretary of State to form TreeNada Co.

3. Shortly thereafter, Defendant solicited Plaintiff to invest in TreeNada Co.
4. At the time Defendant solicited Plaintiff to invest in TreeNada, Defendant failed to disclose information that was material to Plaintiff's decision to invest in a business with Defendant. Specifically, Defendant failed to disclose:
  - a. Defendant had previously been accused of and admitted to embezzling funds from a non-profit organization;
  - b. Defendant was being investigated by the Department of Justice with respect to his involvement with financial irregularities with the non-profit organization.
5. On July 6, 2020, after discussion and negotiation, Plaintiff ultimately invested in TreeNada. Plaintiff became a 49.3% shareholder in TreeNada, and Defendant owned 50.7% of the company's outstanding stock. Initially, Defendant was TreeNada's sole director and officer.
6. On August 10, 2020, TreeNada shareholders voted to expand board of directors from one person to two people with Plaintiff and Defendant elected as directors. Plaintiff was also appointed as secretary, CFO, and treasurer for TreeNada.
7. Over the course of 2020 and 2021, Plaintiff worked full-time for TreeNada, and was not paid a salary, distributions, or compensation of any kind.
8. While TreeNada was growing, the company needed additional capital contributions from its owners. Plaintiff ultimately invested approximately \$900,000 in TreeNada.
9. Unbeknownst to Plaintiff, Defendant began making misrepresentations to third-parties about jobs for TreeNada, had been purporting to enter into contracts on TreeNada's behalf, and began soliciting funds from third-parties for projects on which TreeNada would supposedly produce materials and products.
10. While Defendant was telling third-parties that TreeNada would produce products, Defendant concealed these discussions and purported agreements from Plaintiff. For example, in early August of 2020, Defendant informed Plaintiff about a potential project for TreeNada. The

project was called the “5<sup>th</sup> Street” or “Newport” project. Defendant told Plaintiff that the sale could result in revenue of approximately \$227,000 to TreeNada.

11. On August 11, 2020, Defendant prepared an estimate as “Treenada Construction,” in the amount of \$93,392.13. Said estimate was signed by the signed by the Newport Project customer.<sup>1</sup>

12. On August 17, 2020, the Newport Project customer provided TreeNada with a \$2,000 check to partially cover the deposit for the project. These are the only funds that were directly received by TreeNada from any Newport Project customer. The terms of the estimate required a 10% deposit upon execution, but that was never received.

13. At some point, Defendant agreed to serve as the general contractor through a construction company in which Defendant owned an interest, Project Edge Home Improvement, LLC (“**PEHI**”).

14. Unbeknownst to Plaintiff, on June 9, 2020, prior to Plaintiff’s investment in TreeNada, Defendant had registered the name “Treenada Construction” as an assumed business name of PEHI. This registration of the Treenada name is another fact Defendant concealed and failed to disclose to Plaintiff prior to Plaintiffs investment in TreeNada.

15. Upon information and belief, Defendant used the Treenada Construction name to give the Newport Project customer and her affiliates the impression that they were entering into a contract with TreeNada.

16. After receipt of the \$2,000 partial deposit, TreeNada started spending money on the project in October of 2020, and, at Defendant’s instruction, reimbursed PEHI for \$6,184 of permit fees. Over the course of time, TreeNada spent approximately \$63,000 with vendors in addition to hundreds of hours of time from employees to support the project.

17. On October 7, 2020, Future Advantage LLC purchased a 9.1% stake in TreeNada, leaving 46.1% of TreeNada’s stock owned by defendant, and 44.8% of TreeNada’s stock owned

---

<sup>1</sup> The “Newport Project customer” referenced is Celeste McEntee, one of the plaintiffs in Adversary Proceeding No. 22-6008-tmr.

by Plaintiff.

18. On October 13, 2020, without Plaintiff's knowledge or consent, Defendant filed paperwork with the Oregon Secretary of State to transfer registration of the Treenada Construction assumed business name from PEHI to TreeNada.

19. In February of 2021, PEHI pays TreeNada approximately \$74,000 to partially cover TreeNada's work and expenses on the Newport Project.

20. On August 5, 2021, Plaintiff was told that there were problems with the Newport Project. Plaintiff contacted Defendant, who assured Plaintiff that everything was fine with the project. Defendant told Plaintiff that he had spoken with Celeste McEntee that day, and that the customer's concerns were addressed.

21. On August 6, 2021, Plaintiff was informed by a TreeNada employee that concerns were still being expressed by the Newport Project customer. Plaintiff called the customer to inquire about the concerns. Ms. McEntee informed Plaintiff that she had not spoken to Defendant in months. Ms. McEntee informed Plaintiff that she and her affiliates had advanced more than \$1,100,000 for the project, and that she understood that TreeNada had been paid those funds.

22. Upon information and belief, Defendant diverted the vast majority of the funds advanced by the Newport Project customer.

23. On August 10, 2021, Plaintiff confronted Defendant about the representations that had been made by Defendant regarding the Newport Project, and indicated that Defendant may need to be removed from his position as a director and officer of the company.

24. On August 13, 2021, a shareholder meeting was held. Plaintiff and Future Advantage, LLC voted to remove Defendant from his position as a director of TreeNada. As the sole director of TreeNada, Plaintiff removed Defendant from his position as an officer of TreeNada.

25. Defendant's use of TreeNada's resources, employees and assets, and Defendant

diversion of funds, caused TreeNada to become dramatically insolvent and unable to continue operations. TreeNada's assets were eventually repossessed or sold at auction, and numerous lawsuits have been filed against TreeNada, Plaintiff, and Defendant.

26. As a direct and proximate result of Defendant's conduct, Plaintiff's entire investment in TreeNada was lost, and Plaintiff has been forced to incur attorney fees to defend himself from claims based on Defendant's wrongful conduct.

**CLAIMS FOR RELIEF**  
**FIRST CLAIM FOR RELIEF**

(Embezzlement While Acting in a Fiduciary Capacity)

27. Plaintiff realleges and incorporates by reference paragraphs 2-26 as if fully set forth herein.

28. As a director and officer of TreeNada, Defendant owed Plaintiff and TreeNada duties of care and loyalty.

29. Defendant used TreeNada's employees, materials and resources to work on jobs—including the Newport Project—but diverted funds from those jobs to himself or to entities he owned or controlled.

30. Defendant's conduct breached his duties of loyalty and care.

31. Plaintiff is entitled to damages for the investment he lost as a result of Defendant's conduct, in an approximate amount of \$900,000, plus reasonable attorney fees and costs as allowable under TreeNada's bylaws.

**SECOND CLAIM FOR RELIEF**

(Objection to Dischargeability - 11 U.S.C. § 523(a)(4))

32. Plaintiff realleges and incorporates by reference paragraphs 2-31 as if fully set forth herein.

33. Defendant's use of TreeNada's assets, and his diversion of funds from TreeNada's customers, constitutes defalcation while acting in a fiduciary capacity.

34. Defendant's conduct caused damage to Plaintiff in amounts exceeding \$900,000, and the amount should be excepted from discharge pursuant to 11 U.S.C. § 523(a)(4).

### **THIRD CLAIM FOR RELIEF**

(Objection to Dischargeability - 11 U.S.C. § 523(a)(6))

35. Plaintiff realleges and incorporates by reference paragraphs 2-34 as if fully set forth herein.

36. Defendant, through his conduct, willfully and maliciously injured Plaintiff in amounts exceeding \$900,000, and the amount should be excepted from discharge pursuant to 11 U.S.C. § 523(a)(6).

### **FOURTH CLAIM FOR RELIEF**

(Denial of Discharge- 11 U.S.C. § 727)

37. Plaintiff realleges and incorporates by reference paragraphs 2-34 as if fully set forth herein.

38. Upon information and belief, Defendant misappropriated funds from a non-profit organization through his company Oregon Construction Guys, LLC. Defendant failed to account for this income he received on his Bankruptcy Schedules and Statement of Financial Affairs.

39. Upon information and belief, Defendant misappropriated funds belonging TreeNada and other third-parties. Defendant used his companies, IS61, LLC and PEHI, in his efforts to misappropriate funds from the above-mentioned parties. Defendant failed to account for this income in his Bankruptcy Schedules and Statement of Financial Affairs.

40. Upon information and belief, Defendant transferred funds he misappropriated through his business entities, and concealed records and accounts in an effort to hinder creditors' ability to trace the misappropriated funds.

41. Defendant has failed to sufficiently account for the funds he misappropriated.

42. Defendant should be denied a discharge pursuant to 11 U.S.C. § 727(a)(2), (3), (4) and (5).

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs prays for the following relief:

1. That the Court enter an order that Plaintiff's claims against Defendant are non-dischargeable under 11 U.S.C. §§ 523(a)(4) and/or 523(a)(6);
2. That the Court enter an order denying Defendant's discharge pursuant to 11 U.S.C. § 727(a)(2), (3), (4) and (5).
3. For an award of Plaintiff's reasonable attorney fees, costs and disbursements incurred herein; and,
4. For such other and further relief as the Court deems proper

Dated this 8<sup>th</sup> day of April, 2022.

MOTSCHENBACHER & BLATTNER LLP

/s/ Nicholas J. Henderson

Nicholas J. Henderson, OSB #074027

Telephone: 503-417-0508

E-mail: nhenderson@portlaw.com

*Of Attorneys for Creditor David Schaezler*